IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

CRP.No. 2296 of 2001(A)

AGAINST THE ORDER DATED 04/09/2000 IN IA.NO.367 OF 2000 IN OS.585/1995 OF MUNSIFF'S COURT, NORTH PARAVUR

REVN. PETITIONER: 1ST PETITIONER: 1ST PLAINTIFF:

JOSY, AGED 47, S/O.ROCKEY,
RESIDING AT KAVALAMKUZHI VEEDU,
MUNAMBAM KARA, KUZHUPILLI VILLAGE.

BY ADV. SRI.S.VIDYA SAGAR

RESPONDENTS: PETITIONERS 2 TO 5 & 1ST RESPONDENT:
PLAINTIFFS 2 TO 5 & DEFENDANT:

1. RAMAKRISHNAN, AGED 42, S/O.CHAKKAPAN,
THOLAPURATH VEEDU, MUNAMBAM KARA,
KUZHUPILLY VILLAGE.

2. SAJAN, S/O.JANARDHANAN, AGED 38,
THEVOLIL VEEDU, KUZHUPILLY VILLAGE,
MUNAMBAM KARA.

3. ANIRUDHAN, AGED 52, S/O.VELAYUDHAN,
PULIYANAR PARAMBIL, MUNAMBAM KARA,
KUHUPILLI VILLAGE.

4. KUMARAN, AGED 77, S/O.KOCHUKUNJU,
AALAYA PARAMBIL HOUSE, MUNAMBAM KARA,
KUHUPILLI VILLAGE. (DIED)

5. BABU, AGED 52, S/O.GANGADHARAN,
KALLARAKKAL VEEDU, MUNAMBAM KARA,
KUHUPILLI VILLAGE.

NAME OF THE 4TH RESPONDENT IS REMOVED RROM THE ARRAY OF PARTIES VIDE ORDER DATED 5.12.2007 IN C.M.P.NO.4914/2001.

R1 TO R3 BY ADV. SMT.MEREENA JOSEPH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 2296 OF 2001 A

Dated this the 7th day of December, 2007

O R D E R

Revision petitioner, the first plaintiff in O.S.No.585 of 1995, on the file of the Munsiff's Court, North Paravoor, challenges the order dated 4.9.2000, by which the court below dismissed I.A.No.367 of 2000.

2. The suit is for prohibitory injunction restraining the defendant from trespassing into the plaint B schedule pathway and constructing a compound wall making alteration to the existing pathway or reducing its width. An application was filed by the plaintiffs to appoint a Commissioner to report about the lie and nature of the plaint B schedule pathway. It is stated by the revision petitioner that the Commissioner reported that he was not in a position to identify the exact boundary of the defendant's property, since the fencing and the survey stones were removed.

3. I.A.No.367 of 2000 was filed by the plaintiffs for appointing a Commissioner to locate the boundary of the plaint B schedule pathway and to measure the property with reference to the survey records and with the help of the Taluk Surveyor. On 26.8.2000, Advocate A.D.Beena was appointed as the Commissioner. The Commissioner was directed to submit the report on 30.8.2000. It is stated that the inspection of the

property was fixed on 29.8.2000. On that day, according to the plaintiffs, there was a hartal and, therefore, the Commissioner could not inspect the property. The plaintiffs also could not make arrangements for the visit of the Commissioner. On 30.8.2000, the Commissioner surrendered the warrant appointing her as the Commissioner with a report stating that the plaintiffs did not co-operate. The court below dismissed the application for appointing a Commissioner on that ground, which is under challenge in this Revision.

4. In the facts and circumstances of the case, I am of the view that the court below should have granted an opportunity to the plaintiffs to make arrangements so that the Commissioner could inspect the property on a near date. Accordingly, I am of the view that the order impugned is liable to be set aside.

5. Accordingly, the Civil Revision Petition is allowed and the order impugned is set aside. The Commissioner who was appointed by the court earlier (Advocate A.D.Beena) or, if she is not available, any other Advocate shall be appointed by the court for the inspection of the property. The plaintiffs shall co-operate with the Commissioner in carrying out the work. If the court finds that the plaintiffs should be directed to pay the commission batta in advance, appropriate orders can

be passed for the same, so as to ensure full co-operation from the side of the plaintiffs. The court below may direct the Commissioner to complete the inspection and to file the report without delay.

The Civil Revision Petition is allowed as indicated above. No order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO.2296 OF 2001 A

O R D E R

7th December, 2007